(2014) 06 PAT CK 0042

In the Patna High Court

Case No : C.W.J.C. No. 4412 of 2008

Shreedhar Prasad Singh APPELLANT

Vs

The Munghyr-Jamui Central Co-operative Bank Ltd. RESPONDENT

Date of Decision : 16-06-2014

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2014) 4 PLJR 257

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Amrendra Kumar Sinha I and Santosh Kumar Singh, Advocate for the Appellant; Sanjay Kumar, Advocate for the Respondent

Judgement

Chakradhari Sharan Singh, J.—The petitioner held the post of Assistant Manager in the Munghyr-Jamui Central Co-operative Bank Ltd., Munger (hereinafter referred to as the Bank) and was, at the relevant point of time, posted as Branch Manager of Munger Branch of the Bank. He had filed the present writ application seeking following two reliefs:--

"(i) For quashing the impugned order of dismissal of the petitioner and forfeiture of his retiral benefits as contained in letter No. 716 dated 25.1.08 purported to have been passed by the Managing Director, the Munghyr-Jamui Central Co-operative Bank Ltd. in the light of the decision taken by the Board of Directors of the Bank in its meeting held on 17.1.08 under its resolution No. 3 relating to termination of employment of the petitioner who worked as an Assistant Manager, The Munghyr-Jamui Central Co-operative Bank Ltd., Munger.

(ii) For a direction upon the respondents to give consequential reliefs to the petitioner with arrears of salary and retiral benefits after quashing of the impugned order of dismissal."

Out of the two reliefs, as sought for, the relief No. (ii) has been deleted. This aspect has relevance as would emerge from narration of the facts hereinbelow.

This court, however, fails to appreciate the circumstance in which the said relief has been deleted.

2. Had the petitioner been in service he would have attained the age of superannuation on 31.1.2008.

3. A preliminary objection has been raised on behalf of the respondent-Bank that without availing the remedy of appeal against the impugned order of dismissal, the petitioner has approached this court in writ jurisdiction and this writ application deserves to be dismissed on this ground alone.

4. In response, it has been submitted that in view of the plea, as raised on behalf of the petitioner in the writ application, the impugned order is void ab initio and, therefore, no appeal was required to be preferred since the order impugned is beyond jurisdiction as well as inoperative in the facts and circumstances of the case.

5. Challenge to the impugned order is primarily on two counts.

6. It has firstly been contended that the order dated 25.1.2008 imposing punishment of dismissal from service was not communicated to the petitioner till he attained the age of superannuation on 31.1.2008 and it came to be communicated upon him on 2.2.2008, i.e., after he attained the age of superannuation and retired from service. It has, accordingly, been submitted by learned counsel for the petitioner that an order of dismissal can operate only upon actual communication of the order to the petitioner and the petitioner would not be treated to have been dismissed from service w.e.f. any date prior to his superannuation and as a natural corollary it has been submitted that as master service (sic--servant?) relationship between the petitioner and the respondent-Bank came to an end w.e.f. 31.1.2008, no punishment of dismissal could be imposed upon him w.e.f. a date subsequent to the date of his superannuation. Learned counsel for the petitioner has placed reliance upon a Supreme Court judgment reported in State of Punjab Vs. Amar Singh Harika, and a Division Bench judgment of this court reported in Sushil Kumar Pandey Vs. Union of India and Others in support of his plea.

7. It has secondly been contended and pleaded also in the writ application, referring to Clause 49 of the bye-laws of the Bank, that the impugned order of dismissal passed by the Managing Director is beyond jurisdiction. Referring to the said Clause, it has been contended that the Managing Director of the Bank has power to inflict punishment and exercise disciplinary control over all employees of the Bank except the Development Officer, Assistant Manager, Loan Officer and Chief Accountant. This being so, since the petitioner held the post of Assistant Manager, the Managing Director did not have disciplinary control over him. According to learned counsel for the petitioner, the Managing Director did not have the authority either to initiate a departmental proceeding or to impose any punishment upon the petitioner. It has also been submitted that framing of charge and appointment of conducting officer by the Managing Director was also

beyond the competence of the Managing Director and the entire departmental action is vitiated for these reasons.

8. I will consider the second submission first.

9. It has been pleaded in the writ application that appointment of Conducting Officer by the Managing Director itself was unauthorized as the Managing Director did not have any disciplinary control. For the same reason, the Managing Director did not have authority to issue charge-sheet. It has further been pleaded that under the service regulations only Managing Director of the Bank could have been functioned as Conducting Officer in a disciplinary proceeding against superior staff of the Bank.

10. This is to be noted that the petitioner has not pleaded any prejudice caused to him because of appointment of the In-charge General Manager, Sri Upendra Singh, as Conducting Officer in the departmental enquiry against the petitioner. This has also not been pleaded that the Conducting Officer so appointed was holding a rank, lower than that held by the petitioner.

11. A counter affidavit has been filed by the respondent-Bank stating in paragraph 17 as follows:--

"17. That the statement made in paragraph No. 13 of the writ application is false and as such denied. The memo of charge was framed by the Managing Director with prior approval of the Board of Directors of the Bank. It is further made it clear that the Managing Director has been duly authorized by the Board of Directors to take disciplinary action against paid employee of the Bank, therefore, there is no question of transgressing the jurisdiction either by the Managing Director or by the Conducting Officer. The memo of charge was framed by the Managing Director of the Bank which has already been annexed by the petitioner in this writ petition at page No. 32."

12. Paragraph 18 of the said counter affidavit reads thus:--

"18. That in reply to the statements made in paragraph Nos. 14, 15 and 16 of the writ application, the dependent states that as it appears from the record the Conducting Officer issued show-cause notice but he did not chose to appear rather he simply filed an application through post which he has already admitted in the writ application. Even the petitioner in his. writ application has not annexed the objection so filed by him before the Conducting Officer hence in the settled principle of law if the statement is not supported by any document; the same has not relevancy in deciding a factual dispute. The Conducting Officer submitted his report which was placed before the Board of Directors and thereafter the second show-cause notice was issued on 28.12.2007. The petitioner filed his explanation. The Managing Director placed the entire record of the case before the Board of Directors of the Bank. The Board of Directors considered the entire facts and circumstances of the matter in its meeting dated 17.1.2008 and thereafter a decision was taken to dismiss the petitioner from service and the formal order of dismissal was passed by the Managing Director."

13. From the pleadings in the counter affidavit, it would be evident that, as per pleadings of the Bank, the decision at every stage right from the framing of charge till passing of the impugned order was taken by the Board of Directors of the Bank which is certainly the highest authority of the Bank.

14. A detailed rejoinder has been filed on behalf of the petitioner to the said counter affidavit filed on behalf of the Bank. The petitioner has dealt with the averments made in the counter affidavit paragraph-wise in his rejoinder. Conspicuously, specific averments made in the counter affidavit in paragraphs 17 and 18, as quoted above, have not been replied by the petitioner. These averments in paragraphs 17 and 18 of the counter affidavit stand admitted by the petitioner on the principle of non-traverse. The plea of the petitioner, therefore, that the impugned order is vitiated because of initiation of departmental proceeding and issuance of the impugned order by an incompetent authority cannot be accepted. It is, accordingly, rejected.

15. Coming now to the first contention raised on behalf of the petitioner, as noted above, there is minor dispute over the pleadings. As per the petitioner''s case he received the impugned order of dismissal dated 25.1.2008 on 2.2.2008 and in the meanwhile he retired on 31.1.2008. According to him, the communication was made through post to his present address instead of permanent address and there was no communication of the said order till 31.1.2008, being the date of his superannuation. The respondents, on the other hand, in their counter affidavit, have stated that the order of dismissal dated 25.1.2008 was duly communicated to the petitioner prior to his date of his superannuation, i.e., 31.1.2008 but he refused to receive it. In such circumstance, the management of the Bank opted to serve the order by way of post and by special messenger The respondents have denied the petitioner''s assertion that he received the said letter on 2.2.2008. According to them the house of the petitioner was visited on 1.2.2008, 2.2.2008, 4.2.2008 and 8.2.2008 but it was found locked. The petitioner in his reply has reiterated his stand that the impugned order was not served upon him prior to 2.2.2008 and, therefore, the order having been communicated after he ceased to be an employee of the Bank, order of dismissal is inoperative. Reliance has been placed upon the judgment of the Supreme Court in the case of State of Punjab v. Amar Singh Harika (supra) in support of the plea. Relevant portion of which reads thus:--

"We are, therefore, reluctant to hold that an order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it will take effect as from the date on which the order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or is otherwise published. When a public officer is removed from service, his successor would have to take charge of the said office; and except in cases where the officer concerned has already been suspended, difficulties would arise if it is held that an officer who is actually working and holding charge of his office, can be said to be effectively removed from his office by the mere passing of an order by the appropriate authority. In our opinion, therefore, the High Court was plainly right in holding that the order of dismissal passed against the respondent on the 3rd June, 1949 could not be said to have taken effect until the respondent came to know about it on the 28th May, 1951."

16. He has also placed reliance upon a Division Bench judgment of this court in the case of Sushil Kumar Pandey v. Union of India (supra), paragraph 10 of which reads thus:--

"10. So far the order of suspension is concerned, it takes effect from the date of communication and not from the date of actual receipt. This question was considered by the Apex Court in the case of State of Punjab Vs. Khemi Ram, , and it was held that in case of suspension, once an order is issued and it is sent out to the concerned Government servant, it must be held to have been communicated to him, no matter when he actually received it. In paragraph 16 of the said judgment it was, however, held that in case of dismissal actually knowledge by employee may perhaps become necessary because of the consequences but that will not be the situation in case of suspension as after the order of suspension was passed, there was no question of his doing any act or passing any order which is likely to be challenged. Thus, the settled law is that in case of order of dismissal, the order becomes effective when it is communicated, published or known to the person concerned."

17. Learned counsel appearing on behalf of the Bank, dealing with this plea, has relied upon a Supreme Court judgment reported in State of Punjab Vs. Khemi Ram, and has contended that once the order of dismissal was issued by a competent authority, it would become effective from that day itself as it went beyond the control of the competent authority and there would have been no chance whatsoever to change its mind or modifying it. According to him, if an order is issued and sent out to the concerned Government servant, it must be held to have been communicated to him, no matter when he actually received it. Referring to the said judgment, learned counsel for the Bank has submitted that a Government servant, to effectively thwart an order by avoiding receipt of it by one method or other till after the date of his retirement, even though such order is passed and dispatched before such date. He submits that the ratio in the case of State of Punjab v. Khemi Ram (supra) would apply in the facts and circumstances of the present case since the facts would demonstrate that the petitioner avoided receiving the impugned order by one method or the other till his date of superannuation. He has contended that the petitioner cannot be given benefit of his deliberate act to avoid actual service of the impugned order.

18. Before I consider rival submissions made on behalf of the parties and apply the judgments relied upon by them, as indicated above, in the facts and circumstances of the case, I must observe that a. Division Bench of this court in

case of Sushil Kumar Pandey v. Union of India (supra) has considered both the judgments of the Supreme Court in the case of State of Punjab v. Amar Singh Harika (supra) relied upon by learned counsel for the petitioner and State of Punjab v. Khemi Ram (supra) relied upon by learned counsel for the Bank. The Division Bench of this court in the case Sushil Kumar Pandey v. Union of India (supra) was considering the issue as to the place where cause of action would be said to have arisen, when an order of dismissal is challenged, for the purpose of determining territorial jurisdiction of a High Court exercising power under Article 226 of the Constitution of India. As has been quoted above, this court held that though when it come to the case of an order of suspension, such order must be held to have been communicated once such order is issued and it is sent out to the concerned Government servant, no matter when he actually received it. This court, however, held that in case of an order of dismissal, the order becomes effective only when it is communicated, published or known to the person concerned. From a reading of Division Bench judgement of this court in case of Sushil Kumar Pandey v. Union of India (supra), it will appear that this court held that for the purpose of an order of dismissal to be effective, the order must be communicated to such employee concerned or duly published or "known to him". Peculiarly enough, the petitioner has not taken a plea that he did not have any knowledge of the order dated 25.1.2008. His only plea is that such order was not in fact served upon him before 2.2.2008. The petitioner has not stated as to where was he after passing of the impugned order dated 25.1.2008. It is evident from the documents brought on record by the petitioner himself that attempts were made to serve the copy of the order of dismissal on 30.1.2008 and 31.1.2008. It further appears that the said order dated 25.1.2008 was dispatched on 25.1.2008 itself. Facts and circumstances go to suggest that the petitioner had knowledge about the order of dismissal which he intentionally avoided to receive by. one method or the other till he attained the age of superannuation. The Division Bench of this court in case of Sushil Kumar Pandey v. Union of India (supra) will not help the petitioner as this court in that case held that order of dismissal becomes effective when it is communicated, published or "known to the person concerned". As has been indicated above, there is no pleading in the writ application that the petitioner had absolutely no knowledge about the passing of the order of dismissal. This contention of the petitioner, thus, fails. In the facts and circumstances, I hold that the order of dismissal became effective from the date of its issuance of the order or at least from 30.1.2008 when the order was attempted to be served by postal peon on petitioner''s address where he was not found.

19. Had the two submissions raised on behalf of the petitioner, as discussed above, been acceptable by this court, this court would have entertained the writ application in spite of the petitioner having approached this court without availing the remedy of appeal. However, I do not find much substance in the submissions made on behalf of the petitioner as regards the two grounds of challenge, as discussed above. Further, as I have noted above, the petitioner has deleted the

second part of the relief prayed for in the writ application. Therefore, even if it is presumed that the submissions made on behalf of the petitioner, as noted above, were sustained, no relief could have been granted to him as he did not seek any consequential relief. This is to be noted that the gap between the date of issuance of the impugned order and the date when he would have attained the age of superannuation is barely a week. However, I have not gone into the merits of misconduct alleged against him or procedural lapse in the disciplinary proceeding. The petitioner is given liberty to avail his remedy of appeal before the competent authority. If he prefers such appeal within 30 days from today, the court expects that no issue of limitation shall be raised and such appeal shall not be rejected on the ground of delay as, the petitioner was pursuing his remedy before this court.

This writ application is disposed of, accordingly, with the observation, as above.